

**JAN 12 2006****CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

RAMON FLORES ARROYO,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-75219

Agency No. A79-530-225

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted January 9, 2006<sup>\*\*</sup>

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Ramon Flores Arroyo, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") denial of his motion to reopen removal proceedings, in which he alleged ineffective assistance of counsel.

We have jurisdiction pursuant to 8 U.S.C. § 1252. Reviewing for abuse of

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

discretion, *Singh v. INS*, 213 F.3d 1050, 1052 (9th Cir. 2000), we grant the petition for review in part, deny it in part, and remand for further proceedings.

The BIA concluded that Flores Arroyo failed “to show prejudice resulting from his representative’s alleged actions” because he admits to lacking a qualifying relative for cancellation of removal. The BIA did not consider, however, Flores-Arroyo’s contention that the alleged ineffectiveness deprived him of an opportunity to make use of the voluntary departure period he was granted.

Contrary to the government’s contention, Flores Arroyo’s motion to reopen adequately exhausted this claim by specifying in his discussion of prejudice that “even if [he] will lose on merits as to his appeal to BIA, he will have the relief of voluntary departure.” We therefore remand for reconsideration of Flores Arroyo’s motion to reopen. *See Azanor v. Ashcroft*, 364 F.3d 1013, 1021 (9th Cir. 2004).

We deny that aspect of the petition for review alleging prejudice from Flores Arroyo’s inability to file a petition for review of the BIA’s decision on his direct appeal. His unelaborated claim that “constitutional issues” would have been raised in this court does not establish prejudice. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003).

**PETITION FOR REVIEW GRANTED in part; DENIED in part;  
REMANDED.**